SLAPP Stick:

Summer 2011

Fighting frivolous lawsuits against journalists

By Kristen Rasmussen

This month would have marked the sixth year of Jeffrey Cameron, Andrea Cameron and Doug Bouge's costly and time-consuming legal battle — a legal battle that arose solely from their concern about a Palm Beach County, Fla., neighbor's plan to construct a mega-dock on publicly owned lands within an aquatic preserve, and that could have been resolved in their favor in five months or less if Florida's anti-SLAPP statutes provided broader protection.

"We need a very quick way of getting these issues in front of a judge because there isn't one," said Marcy LaHart, the Gainesville, Fla., lawyer who represented the three defendants in the defamation, "wrongful interference with the permitting process" and conspiracy lawsuit their neighbor, attorney Paul Thibadeau, brought against them.

continued inside

A state-by-state guide to anti-SLAPP laws.

REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

> "A SLAPP suit is a desperate attempt by a powerful person to silence a dissenting voice. It is an abuse of the legal system that should not go unpunished."
>
> — Baltimore journalist Adam Meister

Thibadeau alleged that the defendants' public opposition to his application for a permit to build the 270-foot dock caused the local body that manages parts of the river on which he planned to build the structure to administratively challenge the dock permit. Thibadeau sought $100,000 in damages from Bouge and the Camerons, the amount of money he claimed he expended in defending the permit application.

"[This case is] the poster child for why we need a strong anti-SLAPP provision," LaHart said.

Short for strategic lawsuits against public participation, SLAPPs have become an all-too-common tool for intimidating and silencing critics of businesses, often, as in the Florida case, involved in environmental and local land development issues.

A Dallas land developer in October 2008 sued the author and publisher of a book that criticized his involvement in a city's eminent domain plan, alleging 79 separate grounds for defamation. Finding that none of the statements at issue defamed the plaintiff, a Texas appellate court in July threw out the claims in *Main v. Royall*, a case that came to exemplify why Texas enacted an anti-SLAPP law this past legislative session.

Indeed, most suits of this nature would likely fail on their legal merits if fully litigated. Yet, the individuals who bring them meet their objective if they effectively prevent opponents from speaking out. Although most are brought under the guise of a defamation claim, SLAPP suits could just as easily come as accusations of trademark infringement, emotional distress or, like the Florida case, conspiracy or interference with some type of process or business relationship, as in a claim of interference with contract or economic advantage.

A statutory solution

To prevent this chilling effect on speech about matters of public concern, 27 states, along with the District of Columbia and U.S. territory of Guam, have enacted specific anti-SLAPP laws. Moreover, courts in Colorado, Connecticut and West Virginia, which do not have anti-SLAPP statutes, have addressed the problem in several decisions and extended protections somewhat similar to those under some anti-SLAPP statutes. (Bills that would provide remedies for SLAPP defendants were introduced into the Michigan and North Carolina Legislatures and the U.S. Congress this past legislative session, but none have become law.)

Under most anti-SLAPP statutes, the person sued makes a motion to dismiss or strike the case, which the judge is generally required to hear early in the court proceedings, because it involves speech on a matter of public concern. The plaintiff then has the burden of showing a probability that he will prevail in the suit, meaning he must make more than allegations of harm and actually show that he has evidence that can result in a verdict in his favor. After considering this evidence, or lack thereof, the judge determines if the claim has any merit or is merely an attempt to intimidate or silence a critic. If the judge deems the claim meritless, he will grant the defendant's motion to dispose of it. In that case, many of the statutes allow the defendant to collect reasonable attorney fees and court costs from the plaintiff.

Not every unwelcome lawsuit is a SLAPP suit. Rather, the term applies to lawsuits brought to discourage various activities associated with the exercise of the constitutional rights to free speech and to petition the government. Although the specific activities a lawsuit must target to qualify as a SLAPP suit differ among jurisdictions, SLAPP suits generally target speech about issues of public interest or concern, or public participation in government proceedings. Thus, typical SLAPP suits include lawsuits based on: media coverage of newsworthy events; statements or other efforts to report on or oppose a building permit or zoning change; and statements made before a legislative, executive or judicial proceeding or in connection with an issue under review by a governmental body.

Widely disparate levels of protection

The scope of protected activity varies widely. Commonly recognized as the nation's strongest anti-SLAPP law, the California statute protects "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest." Under California law, a website publicly available over the Internet is considered a public forum, so a lawsuit based on any online statement made in connection with an issue of public interest would be subject to early dismissal under the anti-SLAPP statute, assuming other legal standards were met.

This broad protection stands in sharp contrast to the protection under Pennsylvania's anti-SLAPP law, which applies only to individuals petitioning the government about environmental issues.

Likewise, the scope of protection under

both of Florida's anti-SLAPP statutes is relatively narrow and unlikely to protect journalists and others engaged in publishing activities. One prohibits the government from suing "a person or entity without merit and solely because such person or entity has exercised the right to peacefully assemble, the right to instruct representatives, and the right to petition for redress of grievances," while the other applies only to homeowners in a homeowners' association. Thus, Florida has not adopted a statute that addresses civil SLAPP suits like the one the Palm Beach County homeowner brought against the three neighbors who opposed his plan to build a dock.

However, Florida does have a statute that allows a defendant who can show that a losing plaintiff brought a claim without any factual or legal support for it to recover attorney fees from the other side. LaHart relied on this law when she asked a judge to order the neighbor to pay the more than $100,000 she said her clients would have incurred in attorney fees during the six years of unnecessary litigation had LaHart not represented them for free.

The plaintiff, just weeks before the case was scheduled for trial, voluntarily dismissed the claims after LaHart notified him of her intent to seek attorney fees under this statute.

"The Court finds that the action filed by the Plaintiff was a frivolous lawsuit in retaliation against these Defendants for engaging in their constitutionally protected activities," Florida Judge David F. Crow said in his June order granting LaHart's motion for attorney fees, noting the plaintiff's lack of reasonable inquiry and good faith basis for his allegations.

The plaintiff, who claimed an attorney-client privilege or lack of knowledge in response to deposition questions about the charges, had no support for his allegations that a petition against the proposed dock and an alleged misstatement about its dimensions defamed him, Crow held.

"The Defendants' freedom to petition their government and speak their minds regarding matters of public concern are among the most basic fundamental constitutional rights guaranteed to the citizens of this state," he said. "Clearly the purpose of [the statute] is to deter frivolous pleadings by placing the financial responsibility upon those who engage in such activities. . . . This is the situation when such sanctions are proper."

Accordingly, the judge was scheduled to hold a hearing in August to determine the amount of fees the plaintiff must pay LaHart, she said. While this statute may help alleviate the financial burden of

Anti-SLAPP laws and journalists

The Reporters Committee rated on a scale of 1 to 4 stars each jurisdiction with a statute or cases addressing meritless lawsuits brought to silence speech about a public issue. The evaluation is based on the scope of protection for speech by journalists — defined broadly as those who gather and disseminate information to the public — and was calculated as follows:

- The addition of one star for the existence of an anti-SLAPP statute or case law addressing the causes of actions;
- The addition of one star for protection for speech made in any forum in connection with an issue of public concern or interest, not just speech made before a governmental body;
- The addition of one star for protection for speech made in connection with any issue of public concern or interest, not just speech made in connection with an issue under consideration by a governmental body or speech designed to procure favorable government action (those statutes that broadly define issues of public concern or interest to include topics ranging from the government to economic well-being are awarded a star under this criterion);
- The addition of one star for the mandatory, not just the permissive, award of costs and attorney fees to a prevailing SLAPP defendant; and
- The subtraction of one star for the inclusion of additional burdens, such as a requirement that the SLAPP suit be brought in "bad faith" or that the statements be made without knowledge of or reckless disregard for their falsity.

Rating	State	Statute/ case law?	Any forum?	Any public issue?	Mandatory attorney fees/costs?	Additional burden?
☆☆☆	Arizona	✓	✓		✓	
☆☆	Arkansas	✓	✓		✓	- ✓
☆☆☆☆	California	✓	✓	✓	✓	
☆☆	Colorado	✓	✓			
☆	Connecticut	✓				
☆☆	Delaware	✓	✓			
☆☆☆	District of Columbia	✓	✓	✓		
☆☆	Florida	✓			✓	
☆☆☆	Georgia	✓	✓		✓	
☆☆	Hawaii	✓			✓	
☆☆☆☆	Illinois*	✓	✓	✓	✓	
☆☆☆	Indiana	✓	✓	✓	✓	- ✓
☆☆☆☆	Louisiana	✓	✓	✓	✓	
☆☆☆	Maine	✓	✓	✓		
☆☆	Maryland	✓	✓	✓		- ✓
☆☆☆	Massachusetts	✓	✓		✓	
☆☆☆	Minnesota	✓	✓		✓	
☆☆	Missouri	✓			✓	
☆☆	Nebraska	✓	✓			
☆☆	Nevada	✓	✓		✓	- ✓
☆☆	New Mexico	✓			✓	
☆☆	New York	✓	✓			
☆	Oklahoma	✓				
☆☆☆☆	Oregon	✓	✓	✓	✓	
☆☆	Pennsylvania	✓	✓		✓	- ✓
☆☆☆☆	Rhode Island	✓	✓	✓	✓	
☆	Tennessee	✓			✓	- ✓
☆☆☆☆	Texas	✓	✓	✓	✓	
☆☆	Utah	✓	✓			
☆☆☆☆	Vermont	✓	✓	✓	✓	
☆☆☆☆	Washington	✓	✓	✓	✓	
☆	West Virginia	✓				
☆☆☆	Guam	✓	✓		✓	

* However, the language is vague and has not been tested in court.

civil SLAPP-like suits, it lacks the other important protections of specific anti-SLAPP laws, namely the ability to dispose of a meritless claim early in the court proceedings, she added.

A SLAPPed blogger's push for reform in Maryland

Although an award of court costs and attorney fees is not authorized under Maryland's anti-SLAPP law — the only one nationwide without such a provision — the measure helped Baltimore journalist Adam Meister avoid an even heftier cost: $21 million in damages a city official was seeking in her defamation and emotional distress lawsuit over one of Meister's online posts.

In a March column for the Baltimore section of news site examiner.com, Meister asserted that City Councilwoman Belinda Conaway lives outside Baltimore while representing its Seventh Electoral District, in violation of the Baltimore City Charter. As support for these allegations, Meister relied on a sworn statement signed by Conaway and homestead property tax exemption records that identify her Randallstown, Md., home as her principal residence.

Alleging that she has had difficulty sleeping and dealing with others, and became short-tempered and ill because of the stress and distress the column caused, Conaway sued Meister and the owners of the site. Meister filed a motion to dismiss the suit under the state anti-SLAPP statute. (The Reporters Committee for Freedom of the Press filed a friend-of-the-court letter brief in support of Meister's motion.)

At a hearing on the motion, Conaway announced she was dropping the suit because she had, in fact, signed a document stipulating that the Randallstown address was her primary residence for tax purposes. Her lawyer told the judge the councilwoman signed the document by mistake years ago and did not see it again until after filing the lawsuit in May, although Baltimore County property tax records are available online.

Although Meister was represented for free, he still incurred court costs, though he said the greater expense was the threat to free speech, a "vital aspect of American life."

"When I first heard about this, it was May 10, and they didn't serve me until June 1. From May 10 to June 1, the burden was 'Are they going to serve me? I've got to find a lawyer, everyone is telling me to find a lawyer,'" Meister said in a telephone interview shortly after the hearing. "It took away from seeing family of mine, I had to talk to lawyers on the phone instead of going to an event, little things like that. . . . Once I was served, I really had to be careful, because I knew it was real. I had to be careful about what I wrote. I realized that was part of what they were trying to do here. I just kept thinking, 'I have to be quiet.'"

As such, Meister said he hopes to pressure the Maryland General Assembly to amend the state anti-SLAPP statute to provide more protection to successful defendants by allowing them to recover costs and attorney fees.

"A SLAPP suit is a desperate attempt by a powerful person to silence a dissenting voice," he said. "It is an abuse of the legal system that should not go unpunished. There should be meaningful penalties for SLAPP suits in Maryland so others do not attempt to chill free speech in this way in the future."

As the Maryland law indicates, the procedures required and protections provided under anti-SLAPP statutes vary among states. In addition to those mentioned above, other common provisions include expedited appellate review of orders denying motions to dismiss and limits on discovery while the court considers a motion to dismiss under the anti-SLAPP law.

Common to all anti-SLAPP statutes, however, is their intent to provide a quick and painless dismissal of meritless claims based on the exercise of the rights of free speech or petition before they amass a mountain of attorney fees that forces those speaking out about matters of public concern into silence. Without the legislative remedy, speech about important issues often remains chilled, anti-SLAPP advocates in those jurisdictions say.

"I've had more than one client back out of a case or not take an appeal because they were served with one of these [frivolous] suits, even though it was baseless," said Florida environmental attorney LaHart, referring to clients' challenges of various land developers' actions.

State-by-state guide

The following is a state-by-state guide to each jurisdiction's anti-SLAPP law. Most of the information was compiled by Texas media attorney Laura Prather, a partner at the law firm of Sedgwick LLP, who was a driving force behind the state's enactment of an anti-SLAPP statute this past legislative session.

This guide outlines:

* the type of petition or free-speech activities that qualify for protection;

* the procedural mechanisms and evidentiary standards required to obtain early dismissal of a SLAPP suit;

* whether and to what extent an anti-SLAPP motion suspends discovery proceedings — the procedures by which parties to legal actions ask each other to produce documents, sit for a deposition or answer formal written questions;

* the availability of immediate (meaning before the case proceeds to trial) appellate review of a trial court's denial of a motion to dismiss or failure to rule on such in an expedited manner;

* the availability of expedited review (meaning an accelerated briefing and hearing schedule when the case does end up before an appellate court);

* the recovery of attorney fees and court costs incurred in defending a SLAPP suit, and whether an award of such is mandatory or permissive; and,

* the availability of additional remedies such as actual or punitive damages, sanctions or a private cause of action.

Some references to case law have been included where courts have provided further guidance on the statute. Instances where the law of a jurisdiction differs significantly from that of others are noted.

This guide is meant as a general introduction for journalists to the state of the law concerning a specific statutory remedy available to some defendants sued for activities related to the exercise of their rights to free speech or to petition the government. It does not replace the legal advice from an attorney in one's own state when confronted with a specific legal problem. Journalists who have additional questions or who need to find a lawyer with experience litigating these types of claims can contact the Reporters Committee at (800) 336-4243.

Alabama

There is no statute or cases in Alabama addressing SLAPP suits.

Alaska

There is no statute or cases in Alaska addressing SLAPP suits.

Arizona

Arizona's anti-SLAPP law protects against SLAPP suits brought in retaliation for the exercise of one's right to petition the government. Ariz. Rev. Stat. Ann. § 12-751 (2011). Protected petition activities are statements made as part of an initiative, referendum or recall effort, or those submitted to a governmental body concerning an issue under review by that body to influence governmental action or results. Governmental proceedings before or to which these protected statements may be made or submitted include any non-judicial proceeding by an officer, official or body of the federal government

Many anti-SLAPP statutes are limited to protecting citizens who inject themselves into controversies before public bodies, rather than covering anyone who speaks out in any forum about a public issue. Such limited laws are of little use to journalists.

or the state and any of its political subdivisions, including local boards and commissions.

The Arizona anti-SLAPP statute gives defendants the ability to file a motion to dismiss claims infringing the exercise of this right of petition. § 12-752. The court must give "calendar preference" to the case and conduct an expedited hearing on the motion to dismiss.

Arizona's anti-SLAPP law is one of only a handful to not address whether a SLAPP defendant's motion to dispose of the claim will suspend discovery proceedings. The statute requires an Arizona court to grant the motion to dismiss unless the plaintiff can show that the defendant's claimed exercise of the petition right lacked any reasonable factual support or arguable basis in law, and his acts caused actual injury to the plaintiff. In making this determination, the court considers the plaintiff's complaint, the SLAPP defendant's motion to dismiss and sworn statements containing facts on which the assertions in those documents are based.

If a SLAPP defendant prevails on a motion to dismiss, the statute mandates that the court award him court costs and attorney fees. Conversely, if the court finds that the motion to dismiss was frivolous or brought solely to delay the proceedings, it "shall" award costs and attorney fees to the prevailing plaintiff.

Arkansas

The Arkansas anti-SLAPP law immunizes from civil liability anyone making a privileged communication or performing an act in furtherance of the rights of free speech or petition in connection with an issue of public interest or concern unless such statements are made with knowledge of or reckless disregard for their falsity. Ark. Code Ann. § 16-63-504 (2010). Acts in furtherance of the rights of free speech or petition in connection with an issue of public concern include statements made before a legislative, executive or judicial proceeding, or those relating to a matter under consideration by a governmental body. § 16-63-503. A privileged communication is a statement made in the course of official duty about an issue of public concern related to the official proceeding, or criticism of any governmental proceeding or official acts of public officers so long as those opinions are expressed without knowledge of or reckless disregard for their falsity.

When a plaintiff files a lawsuit against someone for an act that reasonably could be viewed as a privileged communication or one in furtherance of the rights of free speech or petition in connection with an issue of public interest or concern, the anti-SLAPP statute requires the plaintiff and his attorney to file written verifications under oath certifying that the claim is grounded in fact and warranted by existing law or a good-faith argument for a modification of existing law. § 16-63-505. If the plaintiff fails to make the verification within 10 days of being notified, most likely by the defendant, of its requirement, the court must dismiss the case. § 16-63-506.

If the plaintiff submits the required verifications, the defendant can file a motion to dismiss or strike the case for improper verification. § 16-63-507. The judge will hear the motion within 30 days, barring court emergencies. Discovery activities are placed on hold once the motion is filed, although the judge may order discovery to be conducted if the requesting party can show good cause for it. In ruling on the motion to dismiss or strike, an Arkansas court will likely first determine whether the verification falsely alleges that the claim is not a SLAPP suit. If that is the case, the judge will grant the motion if he also determines that the statements in the verification indicate the plaintiff or attorney either did not believe the legal claim was legitimate or brought it for an improper purpose. § 16-63-505.

If a plaintiff or his attorney submits a false verification, the court will, at the request of the defendant or on its own, impose sanctions against the plaintiff, his attorney or both. The sanctions may include dismissal of the claim and an order to pay "reasonable expenses incurred because of the filing of the claim, including a reasonable attorney's fee." § 16-63-506. Moreover,

a prevailing SLAPP defendant may be entitled to recover damages if he can show that the claim was brought for the purpose of "harassing, intimidating, punishing, or maliciously inhibiting a person or entity from making a privileged communication or performing an act in furtherance of the right of free speech or the right to petition government . . . in connection with an issue of public interest or concern."

California

To challenge a lawsuit as a SLAPP suit in California, a defendant must show that he is being sued for "any act . . . in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." Cal. Civ. Proc. Code § 425.16 (2010). Under the statute, the rights of free speech or petition in connection with a public issue include four categories of activities: statements made before a legislative, executive or judicial proceeding; statements made in connection with an issue under consideration by a governmental body; statements made in a place open to the public or a public forum in connection with an issue of public interest; and any other conduct in furtherance of the exercise of free-speech or petition rights in connection with a public issue or an issue of public interest. California courts consider several factors when evaluating whether a statement relates to an issue of public interest, including whether the subject of the statement at issue was a person or entity in the public eye, whether the statement involved conduct that could affect large numbers of people beyond the direct participants and whether the statement contributed to debate on a topic of widespread public interest. Under this standard, statements reporting or commenting on controversial political, economic and social issues, from the local to the international level, would certainly qualify. Conversely, a California court has held that statements about a person who is not in the public eye do not relate to an issue of public interest. *Dyer v. Childress*, 55 Cal. Rptr. 3d 544 (Cal. Ct. App. 2007).

The California anti-SLAPP law allows a defendant to file a motion to strike the complaint, which the court will hear within 30 days unless the docket is overbooked. Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it, although the judge may order discovery to be conducted if the requesting party provides notice of its request to the other side and can show good cause for it. In ruling on the motion to strike, a California court will first determine whether the defendant established that the lawsuit arose from one of the statutorily defined protected speech or petition activities. *Braun v. Chronicle Publ'g Co.*, 61 Cal. Rptr. 2d 58 (Cal. Ct. App. 1997). If that is the case, the judge will grant the motion unless the plaintiff can show a probability that he will prevail on the claim. Cal. Civ. Proc. Code § 425.16. In making this determination, the court will consider the plaintiff's complaint, the SLAPP defendant's motion to strike and any sworn statements containing facts on which the assertions in those documents are based.

If the court grants the motion to strike, it will impose costs and attorney fees on the other side. Moreover, the California anti-SLAPP law gives a successful defendant who can show that the plaintiff filed the suit to harass or silence the speaker rather than resolve a legitimate legal injury the ability to file a so-called "SLAPPback" suit against his opponent. § 425.18. Under this remedy, a SLAPP defendant who won his motion to strike may sue the person who filed the SLAPP suit to recover damages for abuse of the legal process. Conversely, the defendant must pay the plaintiff's costs and attorney fees if the court finds that the motion to strike was frivolous or brought solely to delay the proceedings. § 425.16. Either party is entitled to immediately appeal the court's decision on the motion to strike.

Colorado

Although there is no statute in Colorado addressing SLAPP suits, the state's highest court has held that, because it threatens the First Amendment rights of speech and petition, a SLAPP suit should face a "heightened standard" from a court considering a defendant's motion to dispose of the claim. *Protect Our Mountain Env't v. Dist. Court*, 677 P.2d 1361 (Colo. 1984). Under this standard, the plaintiff must show that the defendant's petition activities were not immune under the First Amendment because: the defendant's claimed exercise of the petition right lacked any reasonable factual support or cognizable basis; the primary purpose of the petition activity was to harass the plaintiff or achieve some other improper objective; and the activity had the capacity to adversely affect a legal interest of the plaintiff. According to the court, "[t]his standard will safeguard the constitutional right of citizens to utilize the administrative and judicial processes for redress of legal grievances without fear of retaliatory litigation and, at the same time, will permit those truly aggrieved by abuse of these processes to vindicate their own legal rights."

Connecticut

Although there is no statute in Connecticut addressing SLAPP suits, the state's intermediate appellate court discussed the nature of the causes of action in a case that arose from the defendant's act of filing a complaint against the plaintiff-attorney with the state Bar grievance committee. *Field v. Kearns*, 682 A.2d 148 (Conn. App. Ct. 1996). In addressing a friend-of-the-court brief's suggestion that the plaintiff's lawsuit was essentially a SLAPP suit, the court noted that "[t]he distinctive elements of a SLAPP suit are (1) a civil complaint (2) filed against a nongovernment individual (3) because of their communications to government bodies (4) that involves a substantive issue of some public concern." According to the court, "[t]he purpose of a SLAPP suit is to punish and intimidate citizens who petition state agencies and have the ultimate effect of 'chilling' any such action." Although it stopped short of deciding whether the plaintiff's actions constituted a SLAPP suit, the court agreed that "if bar grievants were not absolutely immune from liability for the act of filing a grievance . . . it would have a chilling result."

Moreover, two different Connecticut trial court opinions adopted a standard requiring a SLAPP suit, in order to be identified and dismissed as such, to be "objectively baseless in that no reasonable litigant could realistically expect success on the merits and . . . conceal[ing] an effort to interfere improperly with the defendant's rights." *Royce v. Willowbrook Cemetery, Inc.*, No. XO8CV010185694, 2003 WL 431909 (Conn. Super. Ct. Feb. 3, 2003); *Arigno v. Murzin*, No. CV960474102S, 2001 WL 1265404 (Conn. Super. Ct. Oct. 2, 2001).

Delaware

The Delaware anti-SLAPP statute protects individuals from legal actions involving public petition and participation. However, such actions are narrowly defined as those brought by a public applicant or permittee in response to the defendant's statements or other efforts "to report on, rule on, challenge or oppose" that application or permission. Del. Code Ann. tit. 10 § 8136 (2011). A public applicant or permittee is defined as "any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission."

The statute allows a defendant faced with

an action involving public petition and participation to move to dismiss the complaint. § 8137. Delaware's anti-SLAPP law is one of only a handful to not address the effect of a SLAPP defendant's motion to dispose of the claim on discovery proceedings. The court will grant the motion unless the plaintiff can demonstrate that the claim has a substantial basis in fact and law or a substantial argument for a modification of existing law. The plaintiff must also establish by clear and convincing evidence that the communication was made with knowledge of or reckless disregard for its falsity if such truth or falsity is material to the underlying claim. § 8136. The statute does not specify what evidence the court will consider in making this determination.

If the court grants the motion to dismiss, it may — but is not required to — award attorney fees, costs and actual damages. § 8138. Moreover, it may award punitive damages to a defendant who can demonstrate that the action was brought "for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights."

District of Columbia

The District of Columbia anti-SLAPP Act of 2010, which went into effect March 31, 2011, applies to suits based on acts "in furtherance of the right of advocacy on issues of public interest." D.C. Law 18-0351 (2011). Such an act is defined as a statement made in connection with an issue under consideration by a governmental body or one made in a place open to the public or a public forum in connection with an issue of public interest. The act also applies to suits arising from expressive conduct involving petitioning the government or communicating views to members of the public in connection with an issue of public interest. The act defines an issue of public interest as "an issue related to health or safety; environmental, economic, or community well being; the District government; a public figure; or a good, product or service in the market place." However, certain commercial statements are outside the protection of the act, which specifically excludes from its definition of an issue of public interest "private interests, such as statements directed primarily toward protecting the speaker's commercial interests rather than toward commenting on or sharing information about a matter of public significance."

A motion to dismiss may be brought under the D.C. anti-SLAPP Act, and the court will hold an expedited hearing on the motion and issue a ruling "as soon as practicable" after the hearing. Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it, although the judge may order "specialized discovery" to be conducted if it "appears likely" that such discovery will enable the plaintiff to defeat the motion to dismiss and is not unduly burdensome. If the defendant can show that the legal action is one involving an act in furtherance of the right of advocacy on an issue of public interest, the court will grant the motion unless the plaintiff can demonstrate that the claim is likely to succeed on its merits. The act does not specify what evidence the court will consider in making this determination.

If the motion to dismiss is granted, dismissal will be "with prejudice," meaning the plaintiff cannot refile the claim. Moreover, the court may — but is not required to — award attorney fees and costs to the prevailing defendant. Conversely, the court may award costs and attorney fees to the plaintiff if it finds that the motion

Anti-SLAPP legislation in Guam

In addition to 27 states and the District of Columbia, the U.S. territory of Guam also has an anti-SLAPP statute. (No other U.S. territories have such laws.) It immunizes from civil liability acts in furtherance of the constitutional right to petition the government in an attempt to procure favorable action. 7 Guam Code Ann. § 17104 (2010). Under the statute, acts in furtherance of the petition right include seeking relief, influencing action, informing, communicating and otherwise participating in the processes of government.

The Guam anti-SLAPP statute gives defendants the ability to file a motion to dismiss or strike claims that infringe the exercise of the petition right. § 17105.

The court must use a "time period appropriate to preferred or expedited motions," and the defendant is entitled to seek expedited review in the appellate court if the trial court fails to rule on the motion in an expedited fashion, although the statute does not define "expedited." § 17106.

Guam's anti-SLAPP statute is one of only a handful to place an absolute hold on discovery activities from the time the motion is filed until not only the trial court has ruled on it, but until all appeals regarding it are exhausted. That is, Guam courts are not statutorily authorized to order discovery to be conducted if the requesting party can show good cause for it.

The judge will grant a SLAPP defendant's motion to dismiss or strike unless the plaintiff can establish by clear and convincing evidence that the defendant's petition activity is not immune from liability. This standard is met only if the plaintiff demonstrates that the defendant's claim of a protected petition activity was objectively baseless in the sense that no reasonable person would conclude that the act involved petitioning the government and subjectively baseless in the sense that the statements were not genuinely aimed at procuring favorable governmental action, but were actually an attempt to use the governmental process for one's own direct effects. *Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13.

In making this determination, the court will consider the plaintiff's complaint, the SLAPP defendant's motion to dismiss or strike and any sworn statements containing facts on which the assertions in those documents are based. 7 Guam Code Ann. § 17106. Guam's anti-SLAPP statute includes a provision allowing the island attorney general or any governmental body to which the SLAPP defendant's acts were directed to intervene, defend or otherwise support the defendant.

If the court denies the motion to dismiss or strike, the defendant is entitled to an expedited review of the order by the appellate court. However, if the SLAPP defendant prevails, the court will award costs and attorney fees and impose on the plaintiff, his attorney or law firm such additional sanctions "as it determines will be sufficient to deter repetition of such conduct and comparable conduct by others similarly situated."

Moreover, a private cause of action for damages, costs and attorney fees against the person responsible is available to any person, not just the defendant, injured as a result of the SLAPP suit.

to dismiss was frivolous or brought solely to delay the proceedings.

Florida

Florida is the only jurisdiction with two separate anti-SLAPP statutes, and the scope of protection under each is relatively narrow. Fla. Stat. § 768.295 (2011) prohibits any governmental entity from suing "a person or entity without merit and solely because such person or entity has exercised the right to peacefully assemble, the right to instruct representatives, and the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and [the Florida Constitution]." Fla. Stat. § 720.304(4) (2011) applies only to homeowners in a homeowners' association and prohibits suits by individuals and business and governmental entities based on homeowners' "appearance and presentation before a governmental entity on matters related to the homeowners' association."

Notably, Florida has not adopted any statute that specifically governs civil SLAPP suits — or non-homeowner-related suits brought by a private plaintiff against a private defendant based on the defendant's exercise of his constitutional rights of assembly or petition. However, it does have a statute that allows a defendant who can show that a losing plaintiff brought a claim without any factual or legal support for it to recover attorney fees from the other side. Fla. Stat. § 57.105 (2011). The state's intermediate appellate court upheld an award of attorney fees under this statute to news media defendants for the plaintiff's filing of a frivolous invasion of privacy and conspiracy to defame lawsuit. *Thomas v. Patton*, 939 So. 2d 139 (Fla. Dist. Ct. App. 2006). Moreover, the federal appellate court in Florida has applied a federal rule of procedure to sanction a plaintiff and his attorney after the latter brought uninvestigated, frivolous claims based on protected speech. *Worldwide Primates, Inc. v. McGreal*, 87 F.3d 1252 (11th Cir. 1996); *Worldwide Primates, Inc. v. McGreal*, 26 F.3d 1089 (11th Cir. 1994).

Under Florida's anti-SLAPP laws, a defendant can file a motion to dispose of the claim, which the court will hear "at the earliest possible time." Fla. Stat. §§ 768.295(5), 720.304(4)(c). Florida's anti-SLAPP laws are two of only a handful to not address whether a SLAPP defendant's motion to dispose of the claim will halt discovery proceedings. Besides saying a defendant must show that the suit was brought in violation of the relevant anti-SLAPP law, neither specifies what standard a court uses to decide whether a claim was wrongly brought. In making this determination, the court will consider the plaintiff's complaint, the SLAPP defendant's motion to dispose of the claim and any sworn statements containing facts on which the assertions in those documents are based.

A SLAPP defendant who prevails on the motion is entitled to recover attorney fees and costs. Moreover, a court may — but is not required to — award the defendant any damages he sustained as a result of the suit. In addition, a defendant who prevails under Florida's homeowner anti-SLAPP law may be awarded treble damages, or three times his actual damages.

Georgia

The Georgia anti-SLAPP law protects acts "in furtherance of the right of free speech or the right to petition government for a redress of grievances under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern." Ga. Code Ann. § 9-11-11.1 (2010). However, such an act is statutorily limited to statements made before a legislative, executive or judicial proceeding or in connection with an issue under review by a governmental body, a definition that is narrowly construed. For example, the state's highest court held that a woman who made statements in online postings and email messages complaining about a health care facility's poor treatment and care of her handicapped son could not invoke the anti-SLAPP statute in a defamation claim against her because, although her statements pertained to a matter of public concern, they were not made in connection with an existing official proceeding or investigation, nor did they request the initiation of such. *Berryhill v. Ga. Cmty. Support & Solutions, Inc.*, 638 S.E.2d 278 (Ga. 2006).

When a plaintiff files a lawsuit against someone for an act that reasonably could be viewed as one in furtherance of the rights of free speech or petition in connection with an issue of public interest or concern, the Georgia anti-SLAPP statute requires the plaintiff and his attorney to file written verifications under oath certifying that the claim is grounded in fact and warranted by existing law or a good-faith argument for a modification of existing law. Ga. Code Ann. § 9-11-11.1. If the plaintiff fails to make the verification within 10 days of being notified, most likely by the defendant, of its requirement, the court must dismiss the case.

If the plaintiff submits the required verifications, the defendant can file a motion to dismiss or strike the case for improper verification. The court will hear the motion within 30 days, barring court emergencies. Discovery activities are placed on hold once the motion is filed, although the judge may order discovery to be conducted if the requesting party provides notice of its request to the other side and can show good cause for it. In ruling on the motion to dismiss or strike, a Georgia court will first determine whether the verification is false. If that is the case, the judge will grant the motion if he also determines that the statements in the verification indicate the claim was brought for an improper purpose or based on protected statements. Alternatively, a Georgia court will grant a SLAPP defendant's motion to dismiss or strike if it finds the statements were made "in good faith." *Atlanta Humane Soc'y v. Harkins*, 603 S.E.2d 289, 293—94 (Ga. 2004).

If the court denies the motion to dismiss or strike, the defendant is entitled to appeal that decision immediately. *Id.* at 291. Either party may ask the court to impose costs and attorney fees on the other side at any time during the course of the action, but no later than 45 days after final disposition of the case. Ga. Code Ann. § 9-11-11.1. Under this provision, a defendant may request this imposition even if the plaintiff voluntarily dismissed the action. Moreover, the court will, at the request of the defendant or on its own, impose sanctions, which may include dismissal of the claim and an order to pay "reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee," against a plaintiff, his attorney or both for a wrongful verification that the claim is not a SLAPP suit. However, the statute does not specify how a court determines whether a claim is wrongly verified.

Hawaii

Hawaii's anti-SLAPP law protects against claims involving "oral or written testimony submitted or provided to a governmental body during the course of a governmental proceeding." Haw. Rev. Stat. § 634F-1 (2011). Although this scope of protection is narrower than that provided under other states' anti-SLAPP statutes, the Hawaii measure includes several unique provisions.

A defendant sued solely because of his public participation before a governmental body may file a motion to dismiss or strike the claim under Hawaii's anti-SLAPP law. §§ 634F-1, 634F-2. If the court fails to rule on the motion in an expedited fashion, the defendant is entitled to file an application asking an appellate court to order the lower court to make its decision, although the statute does not define "expedited." Hawaii's anti-SLAPP statute is one of only a handful to place an absolute hold on discovery activities from the time the motion is

filed until not only the trial court has ruled on it but until all appeals are exhausted. § 634F-2. That is, Hawaii courts are not statutorily authorized to order discovery to be conducted if the requesting party can show good cause for it. The statute allows the plaintiff seven days to amend his complaint so that its allegations are "pled with specificity." In ruling on the motion to dismiss or strike, the judge will review the amended complaint, if submitted, and grant the motion unless the plaintiff can show that it is more likely than not that the allegations do not constitute a SLAPP suit. In making this determination, a Hawaii court will consider the plaintiff's complaint and the SLAPP defendant's motion to dismiss or strike. Hawaii's anti-SLAPP statute includes a provision allowing any governmental body to which the SLAPP defendant's acts were directed to intervene to defend or otherwise support the defendant in the suit.

If the court denies the motion to dismiss or strike, the defendant is entitled to appeal that decision immediately. However, if he prevails, the court will impose costs and attorney fees on the other side, and order him to pay the successful defendant actual damages or $5,000, whichever is greater. Moreover, the Hawaii anti-SLAPP law requires the court to impose "[s]uch additional sanctions upon the [plaintiff], its attorneys, or law firms as the court determines shall be sufficient to deter repetition of the conduct and comparable conduct by others similarly situated." In addition, a private cause of action for damages, costs and attorney fees against the person responsible is available to any person, not just the defendant, injured as a result of the SLAPP suit.

Idaho

There is no statute or cases in Idaho addressing SLAPP suits.

Illinois

The Illinois anti-SLAPP law immunizes from civil liability "[a]cts in furtherance of the constitutional rights to petition, speech, association, and participation in government . . . regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome." 735 Ill. Comp. Stat. 110/15 (2011). The statute does not define these acts.

The Illinois anti-SLAPP statute gives defendants the ability to move to dismiss or strike claims that infringe the exercise of these constitutional rights. The court will hear and decide the motion within 90 days. Stat. 110/20. If it fails to do so, the defendant is entitled to seek expedited review in the appellate court. Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it, although the judge may order discovery to be conducted, assuming the requesting party can show good cause for it, on the question of whether the acts at issue are immune from liability. The court will grant the motion unless the plaintiff can show by clear and convincing evidence that the defendant's acts are not in furtherance of the rights of petition, speech, association or participation in government and thus not immune from liability. The statute does not specify what evidence the court will consider in making this determination.

If the court denies the motion to dismiss or strike, the defendant is entitled to an expedited review of the order by the appellate court. However, if he prevails, the court will impose costs and attorney fees on the other party. Stat. 110/25.

Indiana

To challenge a lawsuit as a SLAPP suit in Indiana, a defendant must show that he is being sued for any act "in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue." Ind. Code § 34-7-7-5 (2011). He must also show that the action was "taken in good faith and with a reasonable basis in law and fact." Moreover, the action must be "lawful," meaning that speech constituting defamation, extortion or any other unlawful act will fall outside the protection of the statute. § 34-7-7-9(d). Although the statute does not define the right of petition or free speech in connection with a public issue, Indiana courts have interpreted it to include media coverage of newsworthy events, including a newspaper's coverage of a town council, *Poulard v. Lauth*, 793 N.E.2d 1120 (Ind. Ct. App. 2003); a newspaper's publication of a town attorney's statements about another attorney, *Shepard v. Schurz Commc'ns, Inc.*, 847 N.E.2d 219 (Ind. Ct. App. 2006); and a television station's investigative report about the safety and legality of pharmaceuticals, *CanaRx Servs., Inc. v. LIN Television Corp.*, No. 1:07-cv-1482-LJM-JMS, 2008 U.S. Dist. LEXIS 42236 (S.D. Ind. May 29, 2008).

The Indiana anti-SLAPP law allows a defendant to file a motion to dismiss the complaint, which the court will hear and decide within 180 days. Ind. Code § 34-7-7-9. Discovery activities irrelevant to the motion are placed on hold once it is filed. § 34-7-7-6. Under the statute, the defendant must specify the public issue that prompted his speech or petition activity. § 34-7-7-9. If he can show by a preponderance of the evidence that the act on which the SLAPP suit is based is a lawful one in furtherance of the constitutional rights of free speech or petition, the court will grant the motion. In making this determination, the judge will consider the plaintiff's complaint, the SLAPP defendant's motion to dismiss and any sworn statements containing facts on which the assertions in those documents are based.

If a SLAPP defendant prevails on the motion to dismiss, he is entitled to recover costs and attorney fees. § 34-7-7-7. Conversely, the defendant must pay the plaintiff's costs and attorney fees if the court finds that the motion to dismiss was frivolous or brought solely to delay the proceedings. § 34-7-7-8.

Iowa

There is no statute or cases in Iowa addressing SLAPP suits.

Kansas

There is no statute or cases in Kansas addressing SLAPP suits.

Kentucky

There is no statute or cases in Kentucky addressing SLAPP suits.

Louisiana

To challenge a lawsuit as a SLAPP suit in Louisiana, a defendant must show that the cause of action arose from "any act of that person in furtherance of the person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue." La. Code Civ. Proc. Ann. art. 971 (2010). Under the statute, the rights of free speech or petition in connection with a public issue include four categories of activities: statements made before a legislative, executive or judicial proceeding; statements made in connection with an issue under consideration by a governmental body;statements made in a place open to the public or a public forum in connection with an issue of public interest; and any other conduct in furtherance of the exercise of free-speech or petition rights in connection with a public issue.

The Louisiana anti-SLAPP law allows a defendant to file a motion to strike the complaint, which the court will hear within 30 days unless the docket is overbooked. Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it, although the judge may order discovery to be conducted if the requesting party provides notice of its request to the other side and can show good cause for it. In ruling on the motion to strike, a Louisiana court will first determine whether the

lawsuit arose from an act protected by the federal and state constitutional guarantees of free speech or petition. *Darden v. Smith*, 879 So. 2d 390 (La. Ct. App. 2004). If that is the case, the judge will grant the motion unless the plaintiff can introduce evidence establishing a probability that he will prevail on the claim. La. Code Civ. Proc. Ann. art. 971. In making this determination, the court will consider the plaintiff's complaint, the SLAPP defendant's motion to strike and any sworn statements containing facts on which the assertions in those documents are based.

If the court grants the motion to strike, the defendant is entitled to recover costs and attorney fees from the other side.

Maine

Maine's anti-SLAPP law protects against claims based on a person's exercise of his right of petition under the federal or state constitutions. Me. Rev. Stat. tit. 14, § 556 (2011). Under the statute, the petition right includes five categories of activities: statements made before a legislative, executive or judicial proceeding; statements made in connection with an issue under consideration by a governmental body; statements reasonably likely to encourage a governmental body's consideration of an issue; statements reasonably likely to enlist public participation in an effort to bring about such governmental consideration; and any other statements protected by the constitutional right to petition the government.

The Maine anti-SLAPP statute gives defendants the ability to move to dismiss claims that infringe the exercise of the petition right. The law requires the court to hear and decide the motion "with as little delay as possible." Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it, although the judge, after a hearing on the matter, may order discovery to be conducted if the requesting party can show good cause for it. The judge will grant the motion unless the plaintiff can show that the defendant's claimed exercise of the petition right lacked any reasonable factual support or arguable basis in law and his acts caused actual injury to the plaintiff. In making this determination, a Maine court will consider the plaintiff's complaint and the SLAPP defendant's motion to dismiss and any sworn statements containing facts on which the assertions in those documents are based. Maine's anti-SLAPP statute includes a provision allowing the state attorney general, on his own behalf or on behalf of any governmental body to which the SLAPP defendant's acts were directed, to intervene to defend or otherwise support the defendant on the motion to dismiss.

If the court grants the motion to dismiss, it may — but is not required to — order the plaintiff to pay the prevailing SLAPP defendant's costs and attorney fees.

Maryland

The Maryland anti-SLAPP law protects defendants from claims based on their "communicati[ons] with a federal, State, or local government body or the public at large, if the defendant, without constitutional malice, reports on, comments on, rules on, challenges, opposes, or in any other way exercises rights under the First Amendment of the U.S. Constitution or . . . the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern." Md. Code Ann., Cts. & Jud. Proc. § 5-807 (2011). However, this statutory definition of a SLAPP suit also requires that it be "[b]rought in bad faith" — the only such requirement in any anti-SLAPP law nationwide — and "[i]ntended to inhibit or [does] inhibit[] the exercise of rights under the First Amendment of the U.S. Constitution or . . . the Maryland Declaration of Rights." Although there are no Maryland state court published reports interpreting the statute, the federal court in Maryland, in two instructive but non-binding decisions involving the law, held that factual disputes as to whether the suits were brought in bad faith precluded their dismissal. *Ugwuonye v. Rotimi*, No. PJM 09-658, 2010 WL 3038099, at *4 (D. Md. July 30, 2010); *Russell v. Krowne*, No. DKC 2008-2468, 2010 WL 2765268, at *3 (D. Md. July 12, 2010).

The Maryland anti-SLAPP law allows a defendant to move to dismiss the claim or to place the proceeding on hold until the matter about which he communicated to the government or the public is resolved. Md. Code Ann., Cts. & Jud. Proc. § 5-807. A court is required to hear the motion to dismiss "as soon as practicable." The statute does not specify whether the filing of these motions tolls discovery activities, though presumably a court's order granting a defendant's motion to place the proceeding on hold until the commented-on matter is resolved would extend to discovery proceedings. In addition, the statute does not specify what standard a court will use to decide these motions or what evidence it will consider in making this determination.

Maryland's anti-SLAPP law is one of only a handful to not address costs and attorney fees.

Massachusetts

To challenge a lawsuit as a SLAPP suit in Massachusetts, a defendant must show that the cause of action is based on the defendant's exercise of his right of petition under the federal or Massachusetts Constitutions. Mass. Gen. Laws ch. 231, § 59H (2011).

Under the statute, the petition right includes five categories of activities: statements made before a legislative, executive or judicial proceeding; statements made in connection with an issue under consideration by a governmental body; statements reasonably likely to encourage a governmental body's consideration of an issue; statements reasonably likely to enlist public participation in an effort to bring about such governmental consideration; and any other statements protected by the constitutional right to petition the government.

However, the state's highest court has limited this petition right definition to statements made on one's "own behalf" and thus found the anti-SLAPP law inapplicable to a journalist's objective, factual news report, even though the account concerned an issue under review by a governmental body and aimed to enlist public participation in the matter. *Fustolo v. Hollander*, 920 N.E.2d 837 (Mass. 2010).

The Massachusetts anti-SLAPP law allows a defendant to file a motion to dismiss the complaint, which the court will hear and decide "as expeditiously as possible." Mass. Gen. Laws ch. 231, § 59H. Discovery activities are placed on hold from the time the motion is filed until the court rules on it, although the judge, after a hearing on the matter, may order discovery to be conducted if the requesting party can show good cause for it.

The judge will grant the motion unless the plaintiff can show that the defendant's claimed exercise of the petition right lacked any reasonable factual support or arguable basis in law and his acts caused actual injury to the plaintiff. In making this determination, a Massachusetts court will consider the plaintiff's complaint, the SLAPP defendant's motion to dismiss and any sworn statements containing facts on which the assertions in those documents are based.

Massachusetts' anti-SLAPP statute includes a provision allowing the state attorney general, on his own behalf or on behalf of any governmental body to which the SLAPP defendant's acts were directed, to intervene to defend or otherwise support the defendant in the motion to dismiss.

Notably, a SLAPP defendant sued in federal court in Massachusetts may not be able to rely on the anti-SLAPP statute because the federal court there has held that the measure is a procedural rule that is inapplicable in federal court. *Stuborn Ltd. P'ship v. Bernstein*, 245 F. Supp. 2d 312 (D. Mass. 2003).

If the court denies the motion, the defendant is entitled to appeal that decision immediately. *Fabre v. Walton*, 802 N.E.2d 1030 (Mass. 2004). However, if it grants the motion, the court will impose costs and attorney fees on the other party. Mass. Gen. Laws ch. 231, § 59H.

Michigan

The Michigan House of Representatives in August 2010 passed House Bill 5036, which provides a remedy for SLAPP defendants. However, as of press time, it did not appear that the state Senate had passed the bill or that it had otherwise become law.

Minnesota

The Minnesota anti-SLAPP statute immunizes from liability "[l]awful conduct or speech that is genuinely aimed in whole or in part at procuring favorable government action . . . unless the conduct or speech constitutes a tort or a violation of a person's constitutional rights." Minn. Stat. § 554.03 (2011). Under the statute, such speech or conduct is public participation. § 554.01. The state's intermediate appellate court has held that the statute does not provide immunity to statements "intentionally aimed at audiences *having no connection with the public . . . controversy*." *Freeman v. Swift*, 776 N.W.2d 485 (Minn. Ct. App. 2009).

Minnesota's anti-SLAPP law allows a defendant who is the subject of a claim that "materially relates to an act . . . that involves public participation" to file a motion to dismiss or strike the complaint. Minn. Stat. § 554.02. Discovery activities are placed on hold from the time the motion is filed until not only the trial court has ruled on it but until all appeals regarding it have been resolved.

However, the judge, after a hearing on the matter, may order discovery to be conducted if the requesting party can show good cause for it. The court will grant the motion unless the plaintiff can show by clear and convincing evidence that the defendant's acts are not immune from liability. The statute does not specify what evidence the court will consider in making this determination.

Minnesota's anti-SLAPP statute includes a provision allowing any governmental body to which the SLAPP defendant's acts were directed to intervene to defend or otherwise support the defendant.

If the court denies the motion to dismiss or strike, the defendant is entitled to appeal that decision immediately. *Special Force Ministries v. WCCO Television*, 576 N.W.2d 746 (Minn. 1998). However, if it grants the motion, the court will order the plaintiff to pay the prevailing SLAPP defendant's costs and attorney fees. Minn. Stat. § 554.04. Moreover, it will award damages to a successful defendant who can show that the plaintiff brought the claim "for the purpose of harassment, to inhibit the [defendant's] public participation, to interfere with [his] exercise of protected constitutional rights, or otherwise wrongfully injure the [defendant]." In addition, the court may — but is not required to — award punitive damages.

Mississippi

There is no statute or cases in Mississippi addressing SLAPP suits.

Missouri

The Missouri anti-SLAPP law applies to "[a]ny action seeking money damages against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting, in a quasi-judicial proceeding before a tribunal or decision-making body of the state or any political subdivision of the state." Mo. Rev. Stat. § 537.528 (2011). A public meeting in a quasi-judicial proceeding includes any meeting held by a state or local governmental entity, including meetings of or presentations before state, county, city, town or village councils, planning commissions or review boards.

The state's intermediate appellate court has held that the underlying claim must be for money damages and not declaratory or injunctive relief, which seek, respectively, determinations from a court about a particular legal issue or court orders to bar certain acts. *Moschenross v. St. Louis County*, 188 S.W.3d 13 (Mo. Ct. App. 2006).

A defendant sued for damages based on his acts in connection with such a public meeting can bring a motion to dismiss under the Missouri anti-SLAPP statute. Mo. Rev. Stat. § 537.528. The court will consider the motion "on a priority or expedited basis." If the court fails to rule on the motion in an expedited fashion, either party is entitled to seek expedited review in the appellate court, although the statute does not define "expedited."

Missouri's anti-SLAPP statute is one of only a handful to place an absolute hold on discovery activities from the time the motion is filed until not only the trial court has ruled on it, but until all appeals regarding it are exhausted. That is, Missouri courts are not statutorily authorized to order discovery to be conducted if the requesting party can show good cause for it. The statute does not specify what standard a court will use to decide these motions or what evidence it will consider in making this determination.

If the court grants the SLAPP defendant's motion to dismiss, it will impose costs and attorney fees on the other side, assuming the defendant complied with certain filing deadlines. Conversely, the court will award costs and attorney fees to the plaintiff if it finds that the motion to dismiss was frivolous or brought solely to delay the proceedings. Either party is entitled to expedited review of the court's decision on the motion to dismiss.

Montana

There is no statute or cases in Montana addressing SLAPP suits.

Nebraska

The Nebraska anti-SLAPP statute protects defendants in legal actions involving public petition and participation. Neb. Rev. Stat. § 25-21, 243 (2010). An action involving public petition and participation is a public applicant or permittee's action for damages "materially related to any efforts of the defendant to report on, comment on, rule on, challenge, or oppose the application or permission[.]" § 25-21, 242. A "public applicant or permittee" is defined as "any person who has applied for or obtained a permit, zoning change, lease, license, certificate, or other entitlement for use or permission to act from any government body or any person with an interest, connection, or affiliation with such person that is materially related to such application or permission."

The statute does not provide for a specific anti-SLAPP motion to dismiss. However, it says a court considering a motion to dismiss an action involving public petition and participation filed under existing procedural rules must expedite and grant preference in hearing the motion. § 25-21, 245. Nebraska's anti-SLAPP law is one of only a handful to not address whether an anti-SLAPP motion suspends discovery proceedings.

The law requires the court to grant the motion unless the plaintiff can show that the claim has a substantial basis in law or is supported by a substantial argument for a modification of existing law. The plaintiff must also establish by clear and convincing evidence that the communication was made with knowledge of or reckless disregard for its falsity if such truth or falsity is material to the underlying claim. § 25-21, 244. The statute does not specify what evidence a court will consider in making this determination.

If the court grants the motion to dismiss, it may — but is not required to — order the plaintiff to pay the prevailing SLAPP defendant's costs and attorney fees. § 25-21, 243. Moreover, it may award damages to a successful defendant who can

show that the plaintiff brought the claim "for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of petition, speech, or association rights."

Nevada

Under the Nevada anti-SLAPP statute, a person who engages in a good faith communication in furtherance of the right of petition is immune from civil liability for claims based on the communication. Nev. Rev. Stat. § 41.650 (2010). Under the statute, a good faith communication in furtherance of the petition right includes three categories of communications that are true or made without knowledge of their falsity: those aimed at procuring governmental or electoral action; those informing or complaining to a federal, state or local legislator or employee about a matter reasonably of concern to the respective governmental entity; and statements made in direct connection with an issue under consideration by a governmental body. § 41.637.

The Nevada anti-SLAPP statute gives defendants the ability to file a motion to dismiss claims infringing the good faith exercise of this right of petition. § 41.660. The court is statutorily required to rule on the motion within 30 days of its filing. Nevada's anti-SLAPP statute is one of only a handful to place an absolute hold on discovery activities from the time the motion is filed until not only the trial court has ruled on it, but until all appeals regarding it are exhausted. That is, Nevada courts are not statutorily authorized to order discovery to be conducted if the requesting party can show good cause for it.

The statute does not specify what standard a court will use to decide these motions or what evidence it will consider in making this determination. Nevada's anti-SLAPP statute includes a provision allowing the state attorney general or other governmental legal representative to defend or otherwise support the defendant.

If a SLAPP defendant prevails on a motion to dismiss, the court will award him court costs and attorney fees. § 41.670. Moreover, the Nevada anti-SLAPP law enables a successful defendant to file a SLAPPback suit against the plaintiff to recover actual and punitive damages and the attorney fees and costs of bringing the separate action.

New Hampshire

There is no statute or cases in New Hampshire addressing SLAPP suits.

New Jersey

There is no anti-SLAPP statute in New Jersey. Moreover, the state's intermediate appellate court declined to recognize an anti-SLAPP defense, finding it unnecessary given the existence of the similar but broader tort of malicious use of process, which the court reiterated with strong language. *LoBiondo v. Schwartz*, 733 A.2d 516 (N.J. Super. Ct. App. Div. 1999). The plaintiff in a malicious use of process action must prove that the original action was brought without probable cause and motivated by malice, terminated favorably to the plaintiff and caused the plaintiff to suffer a special grievance. Courts have held that the malice element is met by a showing that the purpose of the suit was to retaliate against the defendant for his exercise of the constitutional rights of expression or petition, or to stop the defendant from further exercise of these rights, or both. Further, a special grievance has been defined as interference with a liberty interest, which may include suppression of public debate.

New Mexico

The New Mexico anti-SLAPP law applies to "[a]ny action seeking money damages against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting in a quasi-judicial proceeding before a tribunal or decision-making body of any political subdivision of the state." N.M. Stat. Ann. § 38-2-9.1 (2011). A public meeting in a quasi-judicial proceeding includes any meeting held by a state or local governmental entity, including meetings of or presentations before state, city, town or village councils, planning commissions or review boards.

A defendant sued for damages based on his acts in connection with such a public meeting can bring a motion to dismiss under the New Mexico anti-SLAPP statute. The court will consider the motion "on a priority or expedited basis." If the court fails to rule on the motion in an expedited fashion, either party is entitled to seek expedited review in the appellate court, although the statute does not define "expedited." New Mexico's anti-SLAPP law is one of only a handful to not address the effect of a SLAPP defendant's motion to dispose of the claim on discovery proceedings. The statute does not specify what standard a court will use to decide these motions or what evidence it will consider in making this determination.

If the court grants the SLAPP defendant's motion to dismiss, it will impose costs and attorney fees on the other side, assuming the defendant complied with certain filing deadlines. Conversely, the court will award costs and attorney fees to the plaintiff if it finds that the motion to dismiss was frivolous or brought solely to delay the proceedings. Either party is entitled to expedited review of the court's decision on the motion to dismiss.

New York

The New York anti-SLAPP statute protects defendants in legal actions involving public petition and participation. N.Y. Civ. Rights Law § 70-a (McKinney 2011). An action involving public petition and participation is a public applicant or permittee's action for damages "materially related to any efforts of the defendant to report on, comment on, rule on, challenge or oppose such application or permission." § 76-a. A "public applicant or permittee" is defined as "any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission."

The state's intermediate appellate court has construed these statutory definitions narrowly. For example, it reversed a trial court's finding that a defendant could avail herself of the anti-SLAPP statute, holding that the woman's statements to the press about the plaintiff's alleged misuse of funds were "not materially related to any efforts by her to report on, comment on, challenge, or oppose an application by the plaintiff for a permit, license, or other authorization from a public body." *Long Island Ass'n for AIDS Care v. Greene*, 702 N.Y.S.2d 914 (N.Y. App. Div. 2000).

Likewise, "merely advocating one's agenda at public meetings, or initiating legal action, does not bring an individual within the ambit of an applicant or permittee" as defined in the statute. *Hariri v. Amper*, 854 N.Y.S.2d 126 (N.Y. App. Div. 2008).

The statute does not provide for a specific anti-SLAPP motion to dismiss. However, existing procedural rules state that a court considering a motion to dismiss a case involving public petition and participation must grant preference in hearing the motion. N.Y.C.P.L.R. 3211(g) (McKinney 2011). New York's anti-SLAPP law is one of only a handful to not address the effect of a SLAPP defendant's motion to dispose of the claim on discovery proceedings. The rule requires the court to grant the motion unless the plaintiff can show that the claim has a substantial basis in law or is supported by a substantial argument for a modification of existing law.

The plaintiff must also establish by clear and convincing evidence that the communication was made with knowledge of or reckless disregard for its falsity if

such truth or falsity is material to the underlying claim. N.Y. Civ. Rights Law § 76-a. The statute does not specify what standard a court will use to decide these motions or what evidence it will consider in making this determination.

The New York anti-SLAPP law does not allow for recovery of costs and attorney fees as part of the motion to dismiss. However, a successful defendant may file a SLAPPback suit against the plaintiff to recover costs, attorney fees and actual and punitive damages. N.Y. Civ. Rights Law § 70-a. To receive attorney fees and costs, a SLAPPback plaintiff must show that the lawsuit lacked a substantial basis in law and could not be supported by a substantial argument for a modification of existing law. Actual damages require a showing that the plaintiff in the original action brought the claim "for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of petition, speech, or association rights." To recover punitive damages, a SLAPPback plaintiff must show that the plaintiff in the original action brought the claim solely to impair the SLAPPback plaintiff's rights of free speech, association or petition.

North Carolina

House Bill 746, which provides a remedy for SLAPP defendants, was introduced in the North Carolina House of Representatives in April 2011. However, as of press time, it did not appear that the House had passed the bill or that it had otherwise become law.

North Dakota

There is no statute or cases in North Dakota addressing SLAPP suits.

Ohio

There is no statute or cases in Ohio addressing SLAPP suits.

Oklahoma

Although Oklahoma does not have a specific anti-SLAPP statute marked by the characteristics of the laws, it does immunize from liability for libel certain statements made in the exercise of one's rights of petition or free speech. Okla. Stat. tit. 12, § 1443.1 (2011). Specifically, statements, including criticisms and opinions of public officers' official acts, made in any governmental proceeding in the proper discharge of an official duty, or those contained in the record of these proceedings are privileged from liability so long as they do not falsely impute crime to the criticized officer. However, unlike traditional anti-SLAPP statutes, the Oklahoma law applies only to lawsuits for libel.

Oregon

To challenge a lawsuit as a SLAPP suit in Oregon, a defendant must show that he is being sued for one of four types of free-speech or petition activities: statements made before a legislative, executive or judicial proceeding; statements made in connection with an issue under consideration by a governmental body; statements made in a place open to the public or a public forum in connection with an issue of public interest; and any other conduct in furtherance of the exercise of free-speech and petition rights in connection with a public issue or an issue of public interest. Or. Rev. Stat. § 31.150 (2011).

The Oregon anti-SLAPP law allows a defendant to file a motion to strike the complaint, which the court will hear within 30 days of its filing unless the docket is overbooked. § 31.152. Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it, although the judge may order discovery to be conducted if the requesting party can show good cause for it.

In ruling on the motion to strike, an Oregon court will first determine whether the defendant established that the lawsuit arose from one of the protected speech or petition activities.

If that is the case, the judge will grant the motion unless the plaintiff can establish that the claim is legally sufficient and likely to succeed on its merits. In making this determination, the court will consider the plaintiff's complaint, the SLAPP defendant's motion to dismiss and any sworn statements containing facts on which the assertions in those documents are based.

If the court denies the motion to dismiss, the defendant is entitled to an immediate review of the order by the appellate court. However, if he prevails, the court will impose costs and attorney fees on the other party. Moreover, dismissal will be "with prejudice," meaning the plaintiff cannot refile the claim. Conversely, if the court finds that the motion to dismiss was frivolous or brought solely to delay the proceedings, it may — but is not required to — order the defendant to pay the plaintiff's costs and attorney fees.

Under the federal anti-SLAPP bill, a defendant who is sued in state court and who believes he is immune from liability under the measure or entitled to its protections may remove the case from state court to the federal trial court in that area. However, a defendant who opts to do so must file the motion to dismiss in the federal court within 15 days of removal. The federal court will remand the matter to the state court in which it originated if the defendant fails to meet this deadline.

A federal anti-SLAPP law?

Because anti-SLAPP laws vary widely in efficacy from state to state, advocates have introduced a federal anti-SLAPP bill that would create uniform, nationwide protection. However, as of press time, it did not appear that either body had passed the bill or that it had otherwise become law.

Under the Citizen Participation Act, House Bill 4364, individuals who engage in petition activity without knowledge of or reckless disregard for the falsity of any statements they make are immune from liability. Petition activity includes any statement made before or submitted to a legislative, executive or judicial proceeding or activity encouraging others to make or submit such statements.

Moreover, the act protects statements made in a place open to the public or a public forum in connection with an issue of public interest. Such statements include any information or opinions related to health or safety, environmental, economic or community well-being, the government, a public figure or a good, product or service in the marketplace.

The act gives SLAPP defendants the ability to move to dismiss claims that infringe these petition or free-speech rights. The court must hold an expedited hearing on the motion and rule on it "as soon as practicable" after the hearing. Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it, although the judge may order specified discovery to be conducted if the requesting party notifies the other side of the request and can show good cause for it. In ruling on the motion to dismiss, a court will first determine whether the defendant established that the lawsuit arose from one of the protected speech or petition activities.

If that is the case, the judge will grant the motion unless the plaintiff can establish that the claim is legally sufficient and likely to succeed on its merits. In making this determination, the court will consider the plaintiff's complaint, the SLAPP defendant's motion to dismiss and any sworn statements containing facts on which the assertions in those documents are based.

If the court denies the motion to dismiss, the defendant is entitled to an immediate review of the order by the appellate court. However, if he prevails, the court will impose costs and attorney fees on the other party. Moreover, dismissal will be "with prejudice," meaning the plaintiff cannot refile the claim. Conversely, if the court finds that the motion to dismiss was frivolous or brought solely to delay the proceedings, it may — but is not required to — order the defendant to pay the plaintiff's costs and attorney fees.

Under the federal anti-SLAPP bill, a defendant who is sued in state court and who believes he is immune from liability under the measure or entitled to its protections may remove the case from state court to the federal trial court in that area. However, a defendant who opts to do so must file the motion to dismiss in the federal court within 15 days of removal. The federal court will remand the matter to the state court in which it originated if the defendant fails to meet this deadline.

arose from a protected speech or petition activity. § 31.150. If that is the case, the judge will grant the motion unless the plaintiff can introduce substantial evidence of a probability that he will prevail on the claim. In making this determination, the court will consider the plaintiff's complaint, the SLAPP defendant's motion to strike and any sworn statements containing facts on which the assertions in those documents are based.

If the court grants the motion to strike, it will impose costs and attorney fees on the other side. § 31.152. Conversely, the defendant must pay the plaintiff's costs and attorney fees if the court finds that the motion to strike was frivolous or brought solely to delay the proceedings.

Pennsylvania

Pennsylvania has a narrow anti-SLAPP statute that applies only to individuals petitioning the government about environmental issues. 27 Pa. Cons. Stat. §§ 7707, 8301—03 (2011). To challenge a lawsuit as a SLAPP suit, a defendant must show that he is being sued for communications relating to the implementation or enforcement of an environmental law or regulation that are made to a governmental agency, or in a court action to enforce an environmental law or regulation, with the aim of procuring favorable governmental action. § 8302. Pennsylvania courts have interpreted this language broadly to include statements made directly to a governmental body and statements made to non-governmental representatives but aimed at procuring favorable governmental action on an environmental issue.

Examples of statements in this latter category include "a letter to the editor of a local newspaper expressing concern about the possibility of contamination at a proposed development, a statement made to a newspaper reporter about the possibility of contamination at a proposed development, or a signboard which protests the development of a wetland. Although such oral and written statements are technically not made *directly* to the government, they are more likely than not, aimed at procuring favorable government action and may be entitled to the immunity" authorized by the anti-SLAPP law. *Penllyn Greene Assocs., L.P. v. Clouser*, 890 A.2d 424 (Pa. Commw. Ct. 2005).

However, the statute contains exemptions and does not apply to communications that are irrelevant or immaterial to the implementation or enforcement of an environmental law or regulation, and are: knowingly false, deliberately misleading or made with malicious and reckless disregard for their falsity; made for the sole purpose of interfering with existing or proposed business relationships; or later determined to be a wrongful use of process. 27 Pa. Cons. Stat. § 8302.

The Pennsylvania anti-SLAPP statute gives a defendant the ability to file a motion asking the court to determine whether the statements at issue are immune from liability. § 8303. The court is required to conduct a hearing on the matter. The statute does not specify what standard a court will use to decide these motions or what evidence it will consider in making this determination.

If the court denies the motion, the defendant is entitled to appeal the decision immediately, and discovery activities are placed on hold until the appellate court rules. § 8303. However, if it grants the motion, the court will impose costs and attorney fees on the other side. § 7707. Moreover, the court may — but is not required to — order a full or partial award to a defendant who partially prevails.

Rhode Island

Rhode Island's anti-SLAPP law protects against claims based on a person's exercise of his rights of petition or free speech under the federal or state constitutions in connection with a matter of public concern. R.I. Gen. Laws § 9-33-2 (2010). Under the statute, a person's exercise of his rights of petition or free speech includes three categories of activities: statements made before a legislative, executive or judicial proceeding; statements made in connection with an issue under consideration by a governmental body; and statements made in connection with an issue of public concern.

However, the statute exempts statements that "constitute[] a sham," or those not genuinely aimed at procuring favorable governmental action. Specifically, the petition or free-speech activity will be deemed a sham only if it is "objectively baseless" in the sense that no reasonable person exercising these rights could realistically expect success in procuring the governmental action and "subjectively baseless" in the sense that the act is actually an attempt to use the governmental process for one's own direct effects.

The Rhode Island anti-SLAPP statute gives defendants the ability to file a motion asking the court to determine whether the statements at issue are immune from liability. Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it, although the judge, after a hearing on the matter, may order discovery to be conducted if the requesting party can show good cause for it.

The statute does not specify what standard a court will use to decide these motions or what evidence it will consider in making this determination. The Rhode Island anti-SLAPP statute includes a provision allowing the state attorney general or any governmental body to which the SLAPP defendant's acts were directed to intervene to defend or otherwise support the defendant. § 9-33-3.

If the court grants the motion, it will order the plaintiff to pay the prevailing SLAPP defendant's costs and attorney fees. Moreover, the court will award actual damages and may — but is not required to — award punitive damages to a defendant who can show that the claim was frivolous or brought "with an intent to harass the [defendant] or otherwise inhibit [his] exercise of [the] right to petition or free speech under the United States or Rhode Island constitution." § 9-33-2.

South Carolina

There is no statute or cases in South Carolina addressing SLAPP suits.

South Dakota

There is no statute or cases in South Dakota addressing SLAPP suits.

Tennessee

Tennessee has a narrow anti-SLAPP statute that immunizes from civil liability individuals for certain statements they make to governmental agencies. Tenn. Code Ann. § 4-21-1003 (2011). Specifically, "[a]ny person who in furtherance of such person's right of free speech or petition under the Tennessee or United States Constitution in connection with a public or governmental issue communicates information regarding another person or entity to any agency of the federal, state or local government regarding a matter of concern to that agency" is privileged from liability. The statute does not apply if the person knowingly or with reckless disregard for its falsity communicated false information about a public official or figure, or negligently communicated false information about a private person or entity.

The statute is silent about the procedure by which a defendant can assert his claim of immunity. It also does not address the effect of a SLAPP defendant's claim of immunity on discovery proceedings, nor specify what standard a court will use or what evidence it will consider in deciding the issue. Tennessee's anti-SLAPP law includes a provision allowing any governmental agency to which the SLAPP defendant's acts were directed to inter-

vene to defend a suit based on a statement to the agency. § 4-21-1004.

If the SLAPP defendant prevails on his immunity defense, the court will impose costs and attorney fees on the other side. § 4-21-1003. It will also award attorney fees and costs to a governmental agency that intervened and prevailed. § 4-21-1004. Conversely, the agency must pay the plaintiff's costs and attorney fees if it cannot establish that the statements were immune. The statute does not state whether a losing SLAPP defendant must pay anything to the opposing party.

Texas

The Texas Citizens Participation Act, which went into effect June 17, 2011, provides a remedy against lawsuits based on statements, made or submitted in any form or medium, in connection with the defendant's rights of association, free speech or petition. The act broadly defines these rights. Right of association means communication between individuals "who join together to collectively express, promote, pursue, or defend common interests." Right of free speech means communication made in connection with a matter of public concern. Right of petition means a wide range of communications relating to governmental proceedings or issues under consideration by governmental bodies. A matter of public concern is also broadly defined to encompass the topics of health and safety, environmental, economic and community well-being, the government, public officials and public figures and goods, products or services in the marketplace.

The act gives defendants the ability to file a motion to dismiss claims that infringe the exercise of these constitutional rights. The court must hear the motion within 30 days of its filing, unless the docket is overbooked, and rule on it within 30 days of the hearing. If it fails to decide within 30 days of the hearing, the motion is deemed to have been denied, and the defendant is entitled to seek expedited review in the appellate court. Discovery activities are placed on hold from the time the motion is filed until the judge has ruled on it, although the court, at the request of a party or on its own, may order "specified and limited discovery relevant to the motion" to be conducted if the requesting party can show good cause for it.

In ruling on the motion to dismiss, a Texas court will first determine whether the defendant established that, more likely than not, the lawsuit arose from a protected association, free speech or petition activity. If that is the case, the judge will grant the motion unless the plaintiff can establish by "clear and specific" evidence, a higher standard than the "more likely than not" one required of the defendant, that the claim is likely to succeed on its merits. In making this determination, a Texas court will consider the plaintiff's complaint, the SLAPP defendant's motion to dismiss and any sworn statements containing facts on which the assertions in those documents are based.

If the court grants the motion to dismiss, it will impose costs, attorney fees "and other expenses . . . as justice and equity may require" on the other party. Moreover, the court must sanction the plaintiff "as the court determines sufficient to deter [him] from bringing similar actions." Conversely, if the court finds that the motion to dismiss was frivolous or brought solely to delay the proceedings, it may — but is not required to — order the defendant to pay the plaintiff's costs and attorney fees. Either party is entitled to expedited review of the court's decision on the motion to dismiss.

Utah

The Utah anti-SLAPP law protects defendants who believe they have been sued primarily for their participation in the process of government and as a means of harassment. Utah Code Ann. § 78B-6-1403 (2011). Process of government is defined as "the mechanisms and procedures by which the legislative and executive branches of government make decisions, and the activities leading up to the decisions, including the exercise by a citizen of the right to influence those decisions under the First Amendment to the U.S. Constitution." § 78B-6-1402.

The state's highest court has interpreted this definition narrowly. In reversing a trial court's order that the anti-SLAPP statute barred a defamation claim against a small-town newspaper and its publisher for a political editorial published during an election campaign and disagreeing with the plaintiff's position in an earlier political advertisement, the Utah Supreme Court emphasized that the state Legislature specifically fashioned the anti-SLAPP statute "to link its applicability to the context in which the action in question took place: participating in the process of government by exercising the right to influence legislative and executive decisions." *Jacob v. Bezzant*, 212 P.3d 535 (Utah 2009). An election does not involve such participation, but rather "reflects citizen decision making in the process of government as distinguished from executive and legislative decision making," the court said.

Useful factors to consider in determining whether speech was an exercise of the right to influence legislative or executive decision making are "whether the speech contained express or implied intent to influence the decision-maker, whether a decision-maker was aware of the speech, whether the decision-maker was in the process of making a decision when the speech was made, or whether the decision-maker considered the speech when making the decision." In applying these criteria, the court observed that the newspaper's election editorial did not "expressly request that the executive or legislative branch of [the city] government take any action. Nor c[ould] it be read to impliedly request that government decision-makers act."

Moreover, the record indicated that the decision makers were not considering whether to change the long-standing policy addressed in the editorial, the topic was not even up for discussion or decision during the relevant time period, and the city mayor testified that he was unaware of the editorial when he assumed the position. Accordingly, the court held that because the editorial merely "provided information useful to voters in choosing whom to vote for," the anti-SLAPP statute did not apply.

An individual who is improperly sued for participating in the process of government may file a motion asking the court to enter judgment in his favor, which the court must hear and decide "as expeditiously as possible." Utah Code Ann. § 78B-6-1404. The defendant is entitled to seek immediate review in the appellate court if the trial court fails to rule on the motion in an expedited fashion, although the statute does not define "expedited." Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it unless the court orders otherwise.

In ruling on the defendant's motion, a Utah court will consider the defendant's sworn statement "detailing his belief that the action is designed to prevent, interfere with, or chill public participation in the process of government, and specifying in detail the conduct asserted to be the participation in the process of government believed to give rise to the complaint." § 78B-6-1403. If the judge finds that the defendant established by clear and convincing evidence "that the primary reason for the filing of the complaint was to interfere with the first amendment right of the defendant," he will grant the motion. § 78B-6-1404. Utah's anti-SLAPP statute includes a provision allowing the state attorney general or any governmental body to which the SLAPP defendant's acts were directed to intervene to defend or otherwise support the defendant.

If the court denies the motion, the defendant is entitled to appeal that decision immediately. The Utah anti-SLAPP law does not allow for recovery of costs and attorney fees as part of the motion to dismiss. However, a defendant who can show that the claim lacked a substantial basis in fact and law and could not be supported by a substantial argument for a modification of existing law may file a SLAPPback suit against the plaintiff to recover costs and attorney fees. § 78B-6-1405. Damages are available if the defendant can show that the claim was brought "for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of rights granted under the First Amendment to the U.S. Constitution."

Vermont

To challenge a lawsuit as a SLAPP suit in Vermont, a defendant must show that he is being sued for "an action arising from the . . . exercise, in connection with a public issue, of the right to freedom of speech or to petition the government for redress of grievances under the United States or Vermont Constitution." Vt. Stat. Ann. tit. 12, § 1041 (2011).

Under the statute, the rights of free speech or petition in connection with a public issue include four categories of activities: statements made before a legislative, executive or judicial proceeding; statements made in connection with an issue under consideration by a governmental body; statements made in a place open to the public or a public forum in connection with an issue of public interest; and any other conduct in furtherance of the exercise of free-speech or petition rights in connection with a public issue or an issue of public interest.

The Vermont anti-SLAPP law allows a defendant to file a motion to strike the complaint, which the court will hear within 30 days unless good cause for an extension exists. Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it, although the court may order "limited discovery" to be conducted to assist in its decision on the motion to strike if the requesting party can show good cause for it.

The judge will grant the motion unless the plaintiff can show that the defendant's claimed exercise of the petition or free-speech right lacked any reasonable factual support and arguable basis in law and his acts caused actual injury to the plaintiff. In making this determination, the court will consider the plaintiff's complaint, the SLAPP defendant's motion to strike and any sworn statements containing facts on which the assertions in those documents are based.

If the court grants the motion to strike, it will impose costs and attorney fees on the other side. Conversely, the defendant must pay the plaintiff's costs and attorney fees if the court finds that the motion to strike was frivolous or brought solely to delay the proceedings. Either party is entitled to immediately appeal the court's decision on the motion to strike.

Virginia

There is no statute or cases in Virginia addressing SLAPP suits.

Washington

The Washington anti-SLAPP statute protects defendants from claims based on actions involving public participation and petition. Wash. Rev. Code § 4.24.525 (2011). Under the statute, an action involving public participation and petition includes five categories of activities: statements made before a legislative, executive or judicial proceeding; statements made in connection with an issue under consideration by a governmental body; statements reasonably likely to enlist public participation in an effort to bring about such governmental consideration; statements made in a place open to the public or a public forum in connection with an issue of public concern; and any other lawful conduct in furtherance of the exercise of free-speech or petition rights in connection with an issue of public concern.

Prior to significant amendments enacted in 2010, only statements made directly to governmental agencies or judicial bodies were protected under the Washington anti-SLAPP statute. In August 2010, the federal court in Washington applied the expanded statutory protection for public statements related to issues of public concern and dismissed privacy claims in a lawsuit against Filmmaker Michael Moore regarding his 2007 health care documentary "Sicko." *Aronson v. Dog Eat Dog Films, Inc.*, 738 F. Supp. 2d 1104 (W.D. Wash. 2010).

Another 2010 revision allows a defendant to file a motion to strike the complaint, which the court will hear within 30 days unless the docket is overbooked. Even then, the law directs the court to hold the hearing "with all due speed and such hearings should receive priority."

Moreover, the court must rule on the motion within seven days of the hearing, and either party is entitled to seek expedited review in the appellate court if the trial court fails to do so in a timely fashion, although the statute does not define "timely." Discovery activities are placed on hold from the time the motion is filed until the court has ruled on it, although the judge may order "specified discovery" to be conducted if the requesting party can show good cause for it.

In ruling on the motion to strike, a Washington court will first determine whether the defendant established that, more likely than not, the claim is based on an action involving public participation and petition. If that is the case, the judge will grant the motion unless the plaintiff can establish by "clear and convincing" evidence, a higher standard than the "more likely than not" one required of the defendant, that the claim is likely to succeed on its merits.

In making this determination, the court will consider the plaintiff's complaint, the SLAPP defendant's motion to strike and any sworn statements containing facts on which the assertions in those documents are based. Washington's anti-SLAPP statute includes a provision allowing the state attorney general or any governmental body to which the SLAPP defendant's acts were directed to intervene to defend or otherwise support the defendant.

If the court grants the motion to strike, in whole or in part, it will award costs, attorney fees, an additional $10,000 and such additional relief, including sanctions on the plaintiff and his attorney or law firm, "as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated." Conversely, if the court finds that the motion to strike was frivolous or brought solely to delay the proceedings, it will award the same remedy to the plaintiff, even if he only partially prevailed in preventing dismissal of the suit. Either party is entitled to expedited review of the court's decision on the motion to strike.

West Virginia

Although there is no statute in West Virginia addressing SLAPP suits, the state's highest court has held that speech and petition activity in connection with an issue of public interest is entitled to heightened protection. *Harris v. Adkins*, 432 S.E.2d 549 (W.Va. 1993). Specifically, the exercise of the constitutional right to petition the government cannot give rise to liability unless a plaintiff can show that the defendant acted with knowledge of or reckless disregard for the falsity of statements made.

Wisconsin

There is no statute or cases in Wisconsin addressing SLAPP suits.

Wyoming

There is no statute or cases in Wyoming addressing SLAPP suits.